11—63.4(8A) Family and Medical Leave Act leave. An employee who has been employed for at least 12 months and who has worked at least 1,250 hours during the previous 12-month period shall be eligible for 12 weeks of family and medical leave per fiscal year in accordance with the federal Family and Medical Leave Act (FMLA), these rules, and the policies of the department. Eligibility determinations shall be made as of the date that the FMLA leave is to begin. Eligible employees are entitled to FMLA leave subject to the following conditions:

63.4(1) It is the appointing authority's responsibility to designate leave as FMLA leave. The appointing authority shall designate leave as FMLA leave when the leave qualifies for FMLA leave, even if the employee makes no request for FMLA leave or does not want the leave to be counted as FMLA leave. No more than 12 weeks (480 hours) of family and medical leave shall be granted to an employee in any fiscal year. When both spouses are employed by the state, they shall be limited to a combined total of 12 weeks of FMLA leave taken in accordance with paragraph *"a"* or *"c"* below. The hourly equivalent for part-time employees shall be prorated based upon the average number of hours worked during the previous six months. Leave may be for one or more of the following reasons:

a. The birth, adoption or foster placement of a son or daughter (biological child, adopted child, foster child, stepchild, legal ward or a child to whom the employee stands in loco parentis) provided the leave is taken within 12 months following any such birth, adoption or foster placement;

b. The care of a son or daughter under 18 years of age, or older if incapable of self-care because of a mental or physical disability, or spouse with a serious health condition;

c. The care of a parent or person who stood in loco parentis to the employee, with a serious health condition;

d. A serious health condition that makes an employee incapable of performing any one of the essential functions of the employee's position.

63.4(2) Leave may be taken on an intermittent leave basis or on a reduced work schedule basis where this type of leave is medically necessary. The use of intermittent or reduced work schedule leave for circumstances described in paragraph *"a"* of subrule 63.4(1) shall be at the discretion of the appointing authority. Approval of intermittent or reduced schedule leave for circumstances described in paragraph *"b," "c"* or *"d"* of subrule 63.4(1) is mandatory if certified by a health care provider.

63.4(3) Use of sick leave shall be in accordance with rule 63.3(8A). When FMLA leave is taken pursuant to paragraph *"a," "b"* or *"c"* of subrule 63.4(1), an employee must exhaust all paid vacation before unpaid leave is granted. However, sick leave may be used to the extent authorized by subrule 63.3(11). When an employee takes FMLA leave after the birth of a child and the employee has not received a medical release to return to work, the employee must exhaust all accrued sick leave and vacation before unpaid leave is granted. When the employee's medical provider releases the employee to return to work, the employee is no longer eligible to use paid sick leave; however, the employee may use leave as authorized by subrule 63.3(11) and accrued vacation.

An employee who requests FMLA leave after the birth, adoption or foster placement of a son or daughter must take the leave within 12 months after the event.

When family leave is taken pursuant to paragraph *"d"* of subrule 63.4(1), an employee must exhaust all paid sick leave and vacation before unpaid leave is granted. An employee may, but is not required to, use accrued compensatory leave for FMLA leave if the employee follows standard request procedures for the leave. Compensatory leave used in this fashion will not reduce the employee's FMLA leave entitlement.

63.4(4) An employee shall submit a written request of forms developed by the department, to the appointing authority within 30 calendar days prior to the need for FMLA leave when the need for the leave is foreseeable. In situations involving unforeseeable need for leave and leave involving a birth, adoption, foster placement, or planned medical treatment for an illness, the employee must provide notice within two workdays, or as soon as practicable, after the employee learns of the need for the leave. Notice may be made orally or in writing. Untimely requests or failure to provide notice or mandatory information to the appointing authority may result in delay or denial of the FMLA leave. The failure to follow mandatory leave policies may result in discipline to the employee.

The appointing authority shall grant, tentatively grant, delay, or deny leave as FMLA leave within two workdays following notice of the leave or when the appointing authority has a reasonable basis to conclude an absence qualifies as FMLA leave. The appointing authority shall notify the employee using forms developed by the department, or verbally when circumstances prevent delivery of the forms. If verbal notification is made, the appointing authority shall take reasonable steps to deliver written notification to the employee within two workdays.

63.4(5) When the leave involves the employee's serious health condition, the appointing authority may, at the agency's expense, require a second opinion. However, the health care provider chosen by the appointing authority for the second opinion cannot be employed on a regular basis by the appointing authority. If the second opinion differs from the first, the appointing authority may, at the agency's expense, require a third opinion from a health care provider agreeable to both the employee and the appointing authority. The third opinion shall be final and binding on both parties.

63.4(6) During the period of leave, the appointing authority shall pay the state's share of the employee's health, dental, basic life, and long-term disability benefit insurance premiums. Failure by the employee to pay the employee's share of the premiums will result in a loss of coverage. The appointing authority shall provide notice to the employee 15 calendar days prior to any retroactive or prospective cancellation of benefits coverage. Upon return from FMLA leave, employees who have dropped or canceled their health, dental, or life insurance benefits while on FMLA leave will be restored to no more than the same level of benefits upon completion of the necessary insurance applications and other forms required by the department.

63.4(7) Upon returning from FMLA leave, an employee is entitled to no more rights or benefits than the employee would have received had the leave not been taken. If an employee does not return from leave because of the continuation, reoccurrence or onset of a serious health condition, the appointing authority shall require written certification from the health care provider. If the reason for the employee's failure to return is not a certified serious health condition or other circumstances beyond the control of the employee, the state may recover its share of health and dental benefit insurance premiums paid during the period of leave.

63.4(8) The appointing authority may request periodic reports concerning the employee's medical status, and the date the employee may return to work. Requests for periodic reports will be made no more often than necessary depending on the facts and circumstances of each case and shall not exceed one request every 30 days absent extenuating circumstances.

The appointing authority shall require written certification from the health care provider that the employee is able to resume work before allowing an employee with a serious health condition to return from FMLA leave. Upon return from FMLA leave, the employee shall be placed in a position in the same class held prior to the leave, or a class in the same pay grade for which the employee qualifies, with the same pay, benefits, terms and conditions of employment, and geographical proximate location, except that:

a. If a reduction in force occurs while the employee is on leave, the employee's right to a position shall be established in accordance with 11—Chapter 60.

b. The employee's pay increase eligibility date shall be adjusted for absences of more than 30 calendar days.

63.4(9) If an employee unequivocally advises the employer that the employee does not intend to return to work, the employee's entitlement to FMLA leave and associated benefits cease. The failure to return to work upon the expiration of FMLA leave may be considered to be job abandonment.

63.4(10) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. The appointing authority's obligations may be governed by the Americans With Disabilities Act. The appointing authority shall make reasonable accommodations for a qualified employee with a disability when such accommodations will allow the employee to perform essential job functions unless they pose an undue hardship.

63.4(11) An employee remains a participant in the deferred compensation and dependent care programs while on FMLA leave as authorized by these rules and the policies of the department.

63.4(12) FMLA leave runs concurrently with other leave programs administered by the department to the extent the leave qualifies as FMLA leave.

63.4(13) FMLA leave runs concurrently with a workers' compensation absence when the workers' compensation absence is one that meets the FMLA criteria.

An employee can be offered "restricted light duty," and if such restricted duty is refused, it may result in the loss of workers' compensation benefits. Under the FMLA, the appointing authority may offer restricted duty; however, if the employee refuses, the employee shall lose workers' compensation benefits but is still protected by the FMLA.

Employees on workers' compensation who are on FMLA leave concurrently and who are unable to return to work after the exhaustion of FMLA leave are subject to state workers' compensation laws and will have no job restoration rights under the FMLA.

63.4(14) Retention of vacation leave. Notwithstanding subrule 63.4(3), non-contract-covered employees who qualify for FMLA leave are eligible to retain up to two weeks (80 hours) of accrued vacation leave in each fiscal year. An employee must elect, on forms prescribed by the department, to retain up to two weeks (80 hours) of vacation at the onset of the FMLA qualifying event or at any time during the original eligibility period. An employee will not be permitted to retain more vacation than is in the employee's vacation bank at the time of election. Once the election is made, it cannot be increased; however, it may be reduced, at any time, to less than 80 hours. An employee will not be eligible to retain any donated leave.

For employees covered by a collective bargaining agreement, the retention of vacation leave will be governed by the collective bargaining agreement.